

§ 1650.31

5 CFR Ch. VI (1–1–05 Edition)

Federal income tax withholding (except contributions from pay subject to the combat zone tax exclusion). However, a participant does not pay taxes on money that the TSP transfers directly to (or that the participant rolls over to) an eligible employer plan or traditional IRA until the money is withdrawn from the plan or IRA. In addition, any portion of a participant's TSP account that is used to purchase an annuity is not taxed at the time the annuity is purchased; monthly annuity payments are taxable income in the year in which they are paid.

(b) A participant may request that the TSP transfer directly to an eligible employer plan or traditional IRA all or part of any withdrawal that is an "eligible rollover distribution" under the Internal Revenue Code. A withdrawal that is not an eligible rollover distribution cannot be transferred to an eligible employer plan or traditional IRA. If an eligible rollover distribution is not transferred, it is subject to mandatory 20 percent withholding.

(c) A traditional IRA or an eligible employer plan that can accept a transfer must be an IRA or a plan maintained in the United States, which means one of the 50 States or the District of Columbia.

(d) The following TSP withdrawal methods are considered eligible rollover distributions under the Internal Revenue Code, 26 U.S.C. 402(c)(4):

(1) A single payment, as described in § 1650.12;

(2) Monthly payments, as described in § 1650.13, where payments are expected to last less than 10 years at the time they begin. This means that if the participant elects a monthly payment amount, that amount, when divided into the participant's account balance at the time of the first payment, must yield a number less than 120. If the participant elects to change the payment amount after payments begin, future payments may not continue to qualify as eligible rollover distributions if they do not also meet the requirements of this section; and

(3) A final single payment, as described in § 1650.13(c).

(e) The following withdrawal methods are not eligible rollover distributions:

(1) An annuity purchased by the TSP;

(2) Monthly payments that do not meet the criteria set forth in paragraph (d)(2) of this section;

(3) A minimum distribution payment or any portion of a payment which represents a minimum distribution;

(4) A plan loan that is deemed to be a taxable distribution because of default; and

(5) A return of excess elective deferrals.

Subpart D—In-Service Withdrawals

§ 1650.31 Age-based withdrawals.

(a) A participant who has reached age 59½ and who has not separated from Government employment is eligible to withdraw all or a portion of his or her vested TSP account balance in a single payment. The amount of an age-based withdrawal request must be at least \$1,000, unless the withdrawal request is for the entire vested account balance.

(b) An age-based withdrawal is an eligible rollover distribution, so a participant may request that the TSP transfer all or a portion of the withdrawal to a traditional IRA or an eligible employer plan.

(c) A participant is permitted only one age-based withdrawal for an account.

(d) A participant who makes an age-based withdrawal is not eligible to make a partial withdrawal after separating from Government service.

§ 1650.32 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who can certify that he or she has a financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal request must be at least \$1,000.

(b) To be eligible for a financial hardship withdrawal, a participant must have a financial need that results from at least one of the following four conditions:

(1) The participant's monthly cash flow is negative (*i.e.*, the participant's

income is less than his or her monthly expenses on a recurring basis);

(2) The participant has incurred medical expenses as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction as medical expenses for Federal income tax purposes. Eligible medical expenses include the cost of household improvements required as a result of a medical condition, illness or injury. Household improvements are structural improvements to the participant's living quarters or the installation of special equipment that is necessary to accommodate the circumstances of the incapacitated person.

(3) The participant must have paid the cost of repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(4) The participant must have paid attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

(c) When determining financial hardship needs, a participant cannot use any expenses that are already paid or are reimbursable to the participant by insurance or otherwise.

(d) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested; or

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings.

(e) The participant must certify that he or she has a financial hardship as described on the hardship withdrawal form, and that the dollar amount of

the withdrawal request does not exceed the actual amount of the financial hardship.

(f) A participant is not eligible for an in-service hardship withdrawal based solely on monthly negative cash flow (as described in paragraph (b)(1) of this section) during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code (11 U.S.C. chapter 13).

[68 FR 35503, June 13, 2003, as amended at 68 FR 74451, Dec. 23, 2003]

§ 1650.33 Contributing to the TSP after an in-service withdrawal.

(a) A participant's TSP contribution election will not be affected by an age-based in-service withdrawal; therefore, his or her TSP contributions will continue without interruption.

(b) A participant who obtains a financial hardship in-service withdrawal may not contribute to the TSP for a period of six months after the withdrawal is processed. Therefore, the participant's employing agency will discontinue his or her contributions (and any applicable agency matching contributions) for six months after the agency is notified by the TSP; in the case of a FERS participant, agency automatic (1%) contributions will continue. A participant whose TSP contributions are discontinued by his or her agency after a financial hardship withdrawal can resume contributions any time after expiration of the six-month period by submitting a new TSP contribution election. Contributions will not resume automatically.

§ 1650.34 Uniqueness of loans and withdrawals.

An outstanding TSP loan cannot be converted into an in-service withdrawal or vice versa. Funds distributed as an in-service withdrawal cannot be returned or repaid.

Subpart E—Procedures for In-Service Withdrawals

§ 1650.41 How to obtain an age-based withdrawal.

To request an age-based in-service withdrawal, a participant must submit to the TSP record keeper a properly